

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

SINCERE TERRY, et al.

*Plaintiffs,*

v.

CITY OF OKLAHOMA CITY,  
OKLAHOMA, et al.

*Defendants.*

Case No. 5:22-cv-522-G

Hon. Charles B. Goodwin

**PLAINTIFFS' NOTICE OF PENDING MOTIONS**

Plaintiffs respectfully bring to the attention of this Court the pendency of Defendants' three Motions to Dismiss (Dkt. Nos. 40–42). Defendants' Motions to Dismiss have been ripe for decision for more than eleven (11) months, during which time Plaintiffs' First Amendment-protected speech has been chilled.

**I. Defendants' Motions to Dismiss Are Ripe for Decision**

On June 23, 2022, Plaintiffs, six racial justice activists and protesters, filed their Complaint in this Court challenging Defendants' policy, practice, and custom of retaliatory action in violation of the First, Fourth, and Fourteenth Amendments (Dkt. No. 1). On September 14, 2022, Plaintiffs filed their Amended Complaint (Dkt. No. 39).

On September 28, 2022, Defendants Prater, City of Oklahoma City, and VanNort each filed Motions to Dismiss the Plaintiffs' Amendment Complaint (Dkt. Nos. 40–42).<sup>1</sup>

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<sup>1</sup> Defendant David Prater, in his official capacity, was substituted for Vicki Behenna, in her official capacity, on September 13, 2023 (Dkt. No. 53, ¶ 1 n. 1).

On November 2, 2022, Plaintiffs filed their Consolidated Response to Defendants’ Motions to Dismiss (Dkt. No. 45). On November 17, 2022, Defendants Prater and VanNort each filed Replies to Plaintiffs’ Response (Dkt. Nos. 46–47). Defendants’ Motions to Dismiss have therefore been fully briefed and pending for over eleven (11) months.

On September 13, 2023, Plaintiffs submitted a Notice of Supplemental Authority to inform the Court of relevant decisions by the Tenth Circuit and the United States Supreme Court (Dkt. No. 53).

## **II. The Lack of a Ruling Prejudices Plaintiffs**

The harms incurred by Plaintiffs in the violation of their First, Fourth, and Fourteenth Amendment rights are ongoing. Plaintiffs have continued to face the chill and suppression of their constitutionally protected expression as a result of Defendants’ actions (Dkt. No. 39, ¶¶ 398, 405–06, 408–10). That expressive chill is a pervasive and significant harm that is sustained through the pendency of this case.

Furthermore, under Local Rule 26.3(a), “[s]ubject to the exceptions set forth in subsections (b) and (c) of this rule, if a motion has been made pursuant to Fed. R Civ. P. 12(b), no party may seek discovery from any source before that motion has been decided and all moving parties have filed an answer or been dismissed from the case.” LCvR 26.3(a). *See Black Emergency Response Team v. Drummond*, Case No. CIV-21-1022-G, Order Den. Pls.’ Mot. for Limited Disc., ECF No. 155 (W.D. Okla. Oct. 24, 2023).

Absent extraordinary relief, therefore, the pendency of Defendants’ Motions to Dismiss prevents Plaintiffs from obtaining discovery. This restriction prejudices Plaintiffs’ ability

to prepare their case because the passage of time compromises the reliability and availability of evidence, particularly where, as here, defendants include government entities with routine turnover in employment.

Acknowledging that this case has been reassigned twice (Dkt. Nos. 48, 51), Plaintiffs respectfully offer notice of the pendency of Defendants' Motions to Dismiss.

Respectfully submitted,

s/ Megan Lambert

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2023, I electronically filed Plaintiffs' Notice of Pending Motions with the Clerk of Court via the Court's CM/ECF system, which effects service upon all counsel of record.

s/ Megan Lambert  
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